

**This is key point on their 99 law theory – explain details by looking at papers. This is a real lie. They also blasted us for “intimidating” their employees, “wooing” dissident shareholders, “bullying” the company. Get Neil’s email: he raises a critical question – how did George Branch in 2002 before Rakoff stipulate that the same case with the same claims could go to Ecuador, AFTER they had passed the 99 law, and now they complain about it?**

**Met with judge last night in house. Humble house, furniture. Made tea. I really like the guy. Remember last August I wanted to ride the wave and get him off case? This was an example of Pablo’s total intelligence. We saved him, and now we are reaping the benefits. Explain politics around plot to remove Yanez to get rid of the Perfecto and control the money. Pablo under severe pressure. They tried to use our case, enlist our support, because they knew we were upset with him. Texaco watching from sidelines, trying to provoke us. Instead, the Comité passed a resolution that he was able to use before the Judicatura to save his job. He hates Guerra, because Guerra was part of the plot. Guerra will be the judge to decide the case. We have to start lobbying him, working with him.**

**Pablo is so fucking amazing. He gets along with everybody in the court. He has this brilliant long-term strategy of not getting sucked into the petty politics. Even with Ileana, the secretary, who is still fucking us and has not learned her lesson, he gets along well with her and it never gets personal.**

**Pitched the writer at Vanity Fair... on Pablo. Turned him around by explaining details of Pablo’s life. This would be a huge coup.**

**Met interim AG with Luis, APV, Raul. “The door is always open” he said to Luis – a far cry from the days of the protests, fighting our way into the halls of power. Think of what has happened in ten years – how we have gone from fighting on the outside of power, to being on the inside.**

**Lunch with Kelly McBride. Invited her down to San Carlos today.**

**Wooing meeting with MEY.**

### **Jan 17/07 (Quito)**

**Went to Correa inauguration two days ago. Great hope – saw Daniel Ortega, Alan Garcia, Lula, Evo, Chavez, Bachalet – really, awesome display of Latin American power although Kirchner stayed away as a result of the President of Iran showing up. Got in with press pass. Palacio was very dignified. APV told me first time since 1984 that a President of Ec gave the presidential sash to the next President. First time in history of**

Ecuador that the old President and his family walked out with the new President and his family. All the Presidents got stuck on red carpet leading out – cars were not ready, horse shit on the streets, Ortega rushing into the crowd, journalists swarming about each of the heads of state. Get copy of speech. Highlight seeing MEY and re-connecting.

At Mitad del Mundo, great ceremony – I got in stage. Young people – Min of Environment is 37, Cancillera so young, very informal, few are wearing ties, the Min of Agriculture on TV wearing jeans. The three ministers “ratified” from the previous government were all booed – said “fuera” “nueva gente”. Chavez was at Correa’s side the entire time. Correa impulsive – when booing, said the people must be “infiltrados”. Look at mural behind Congress – painting with the CIA.

Worried about Raul and multi-million dollar factura. Raul was at reception for PDVSA yesterday with WS promotional materials. This is his big break but I am concerned the Correa gov will get his bill and then we will look bad because we have been making introductions for him. We need to figure this out with two steps – one, that Raul significantly discount his bill out of the gate, and then discount it again before paying – and that we have conversations with key people putting distance between ourselves and Winston. The problem is that this gov is totally against international arbitration, and they don’t necessarily distinguish between different litigations and they don’t have a clear plan about how to protect their interest against a global legal and financial system that appears to be gamed against them. I need to talk to Raul about it today.

Met with MEY yesterday. We have such a connection. We need to bring her in and reform our team and take advantage of the new coyuntera. Luis is tied up with CEDES issues (Juana is leaving).

Pablo told me the Texaco people saw me at the inauguration on TV and within minutes Pelusa had called the court in Lago to find out if I had been there.

## Dec 16

Back on plane to U.S. Continental, got upgraded to first class. Here is the deal:

New Correa gov offers great hope after fear of Noboa. We were depressed before, euphoric now. Met with **Alberto Acosta** (future minister of energy), and Vargas Pazos. The meeting with Correa did not come thru – he was traveling to various South American countries. We are Raul got meeting with Acosta. Explained case to Acosta. I was struck by his level of honesty, his stature, his intelligence – this is an entirely new thing, the first signs of which I really saw in the earlier meeting with Galo Chiriboga. There are some

incredible, dedicated, honest people in Ecuador. I always thought Mauricio was in the minority, but the reality is that there is probably a whole generation of people waiting to step up if given the opportunity. Acosta said: "Our economy will exist in the service of humanity, not humanity in service of the economy." I talked for a good five minutes and I was proud of myself. Raul explained case. Said only thing they couldn't control was naming of Procurador, and he said they did not have one name to submit to Congress yet of the three required. People were either too old, too young, too this, too that. (He told APV he was too young – very flattering, he would make an excellent PGE.) Acosta said Correa took decision not to take part in Oxy arb – said it was a political decision, wants to discourage other companies from pursuing. This is totally misguided – Raul tried to explain, but did not want to hear. Idea: paises emergentes (bad term used by Raul) form bloque to renegotiated BIT. Acosta seemed to like idea; will try to pursue. APV explained case, as did I. APV also explained mining case: AA said he would be open to dialogue, that the people went work, etc., that it is a little more complicated. In all, meeting gave me a high: I love AA. He greeted me warmly – we had taken part in a press conference together at Accion way back, where no journalists showed up except La Hora (wrote a big story) on issue of arbitration or something (don't remember). We were all very jacked after the meeting – felt hope, like another element had fallen in place for us.

**The integration and closeness of LY, Pablo and myself** is muy impresionante. I feel like we are brothers, and that we are fighting side by side in war, and that we are incredibly loyal and committed to each other. The jokes – Pablo was out with that woman, and I call to offer condoms, and he starts laughing. He has such a great sense of humor, I have such high hopes for him, want to get LLM in EU and become AG of country. But at times he seems very immature and unsophisticated – but the only think holding him back is lack of experience.

**Breakfast with VP, Alexandra, and Lupita** (and friend who will be Pres of Central Bank): Happened Friday at Hotel Quito. What utter contrast to last breakfast, when we were all down with Noboa's first-round victory. I love VP and daughter. She was instrumental in defeating Correa on the banana front. She made it happen. Want to bring her in to our team as spokesperson. Want to bring VP in as consultant to make vision thing get traction. He said the rumor is that the embassy told Correa anybody but VP would be acceptable as defense minister. In paper today it said Correa said he wanted a woman in the position to balance his cabinet. The guy sort of reminds me of Clinton in this respect. VP introduced me to friend as a "good gringo" and we had a lot of laughs talking about how I could be the U.S. ambassador under an Obama administration. Says wants me to meet prima of Correa.

Strategy: Need to finalize **Venezuela** – that is only element still missing to force them to the table.

**Good thing Alberto did:** waited until 6 p.m. on final day of proof period to submit request for global peritaje. (They pulled the same time stunt on us during Guanta.)

**Russ coming in January** – now have contact with two billionaires, Bing and Russ. Andres told me Russ travels under a Bulgarian passport and is vacationing in Mexico. Need budget, need to design trip.

**Negotiating:** It dawned on me for first time during lunch meeting on Wed – LY and PF should not be at negotiation so they can be protected politically and they can criticize the offer on an equal footing with the rest of the people, to maintain their credibility. I see me, Joe, Robinson and Humberto (to protect the Judy flank), and a colona woman, such as Mariana. Plus the support committee. Fine line between getting ready and tipping our hand to Texaco. I am worried if they are there they will bear brunt of inevitable criticism.

**Bonifaz and old tricks/SF Case/Jeff Frazier:** Amazing. We got word from the “CIS” that Frazier coming to San Pablo to sign up clients. LY went Friday to town to explain and close doors. Frazier met with Esperanza on Monday and she expressed sentiment that he was stepping on our toes. In meantime, got word his contract was 40% plus 5% on appeal – pigs, to say the least. After talking to Esperanza, he wanted to meet with LY. We set up meeting for Wed with LY, APV, and PF – plus Frazier and his punk Ecuadorian assistant David. They completely backed off after hearing the situation about CB. Frazier said CB told him it was a completely different case, that the nine clients were not a part of our case, which is a lie. He said CB and Terry don’t know how to run a case, and they had called him to join in and help finance it after seeing that it would get legs. He is working on Oxy case plus fumigations case with Alfredo, and I don’t think he wanted to jeopardize that. Next, we hear CB has contacted a lawyer, Alberto Racines Martinez, to continue his fruitless pursuit of clients after Frazier probably called him with the bad news. One thing you can say, the man is indefatigable. This lawyer is related to Pelusa, who is a member of Texaco’s legal team. This is getting too close for comfort. Manuel Pallares called LY with this info because Poritz told him he wanted to come down on Dec 25 at CB’s behest to deliver \$100,000 worth of medical equipment and arrange the visas for the nine to come up to get examined for depositions, etc. I see it: CB is using the punk Poritz and his high school project to open doors with clients – the same model as the oil companies and missionaries. Had lunch yesterday (Friday) with APV, PF, and LY at the Cangrejo Rojo and we decided to embark on a two-step plan: 1) visit the community where the nine people are, and get a feel for what the plan is, if they were deceived, etc., using someone from the Frente, like Donald, with LY there (according to LY, the dirigente of the community already said they did not know that what they signed is for a lawsuit); and 2) decide what to do.

The reality is we could probably kill the CB lawsuit by convincing his clients to fire him once we explain the situation and apply political pressure, but this entails certain risks for us that include him charging us with interfering with his clients and also removing a point of leverage against the company that can potentially work in our favor. I talked to Joe and he said it might be best to contain it to nine clients, but let it keep going – it is pressure on the company, a case we could ultimately control by signing up more clients, it keeps CB busy and not focused on us, and it provides an escape mechanism should we lose our case – another bite of the apple so to speak. So our interests might overlap a bit

now with Bonifaz. Sort of same reason I did not terribly mind Kimerling's attempt to intervene in New York – as long as it does not go too far.

**Legal issues at this point in case from legal meeting:** First, peritaje global. First issue is who is the perito. We are down to Reyes. The woman from USF is clearly not up to task. Other ideas: guy from Spain recommended by Esperanza not realistic. Choose from 3 options: do nothing more other than Champs study; full-blown at every site; some sort of partial. When we opened it up, Fausto said don't do anything more – that we have a statistically sig sample. I lean to doing it all for legal and political reasons, to make it easier for us to prove out claims and easier for the judge to find damages across the entire ecosystem. FP is drawing up budget. A Wray said same – no need, but if we did it would help us. Thus two people said no need. Budget will probably be 500 to 700; clear Havoc no longer wants to work with us, so we need to look for foreign lab. Other issue is Alegato.

**Fernando Reyes and global:** I had one-hour interview with him Friday to do a hard vet. I asked how T could attack him, and he pointed out: worked for DINAPA and DNH; worked for Fugro McClellan as fiscalizador for three months; wrote in book that gov shares some of the responsibility. He also worked for Maxus as an environmental auditor in the famous Block 16 which had caused so much controversy. I told him pointblank that if he did this he likely would never work in the oil industry again in Ecuador, at least for an American company, but that he could be a national hero and have a job the rest of his life being involved in the clean-up. There is a certain level of “desconfianza” in him for these past jobs, for our previous arrangement as veeduría, for the tepid draft report he wrote, etc. I asked if he could be comfortable slamming them with a 10b judgment. He answered yes to tall, but I don't know if he has the internal timber to pull it off but at this point I don't see a Plan B. Bottom line is that he is an “insider”. I see using E-tech to give him cover, but he has to totally play ball with us and let us take the lead while projecting the image that he is working for the court. I think he knows how to do this; I worry that he will use it like Camino to try to get as much money out of us as he can. Remember, he asked Alberto for 30,000 to get all those papers out of PetroEcuador when we were starting the case. And he is still bugging me about the 1,000 he claims we owe him for work he never ended up doing as we cut off that veeduría project early. Seems petty-minded when we need a big thinker, like Charles or Russell. Will a big thinker in Ecuador please stand up?

**Alberto Wray:** We also met with him on Friday to get his opinion on the **global**, among other matters, in the conference room of his office overlooking the park with competition at bicycle jump place. I always love seeing Alberto... I can't explain why, but it is soothing. I just feel like his interest and his involvement makes this real. At the beginning of the case I just couldn't get comfortable around him, but as I have acculturated I just feel like we are friends. We had a great dinner on Monday night with Raul at Zasu and talked up a story for 3-4 hours, getting into some personal shit about racism against Latino's at Raul's law firm. Alberto seems vulnerable to me. Maybe because he has suffered tremendous attacks from Paco Velasco, Tandazo, and the anti-arbitration crowd and he doesn't know how to defend himself. He said the purpose of the global was to prove that the present contamination was a function of the “sistema

operative” de Texaco, and to determine the overall impacted area, whether or not it is remediable, and if so, how much it would cost. He said it was never the idea to do a lot of field work. He said from a juridico pt of view, the more datos the better. Mor e troublesome was the damages: I started to go through categories, such as degraded habitat, and he rejected them (I don’t trust his opinion – he is very cuadrado on Ec law). He said judge can order Tex to pay; for the Frente to do a clean-up (key, so Frente can control money); to do it in tal manera; and 10% additional for the organization.

**Wray affidavit for Winston case:** Ended up APV having to sign because of ‘94 Wray affidavit where he said opposite – that case could not be brought in Ecuador. For Sand matter, trying to show it could have been brought in Ecuador before the ‘99 law.

**Lauren:** Blow up when she challenged my authority while questioning Sylvia. Difference between expectations and demands of Americans compared to Ecuadorians – interesting.

**Raul dinner/Cullen problem:** Stayed up to 2:30 a.m. at the Marriott. Lie of Kolis regarding Gulf witness and possible bar complaint.

**Cristobal nephew/clean-up for 45 pits:** We met at Saute on Wed night at bar. Talked about CB tying death of father in 1978 of brain cancer to contamination caused by Texaco – joke in family. Said he had contract with Texaco for clean-up – 5.4m for 45 pits. Need to get more.

**Meeting with Secoya:** Came in to Lago on Monday to sign papers about withdrawal of inspections and CB representation. The group has changed so much since 1993. Mobil shit, Aditas shirt, Reebok sox for elderly man in traditional dress. Elias and Humberto spoke in own language, and translated. Went to court. Secretary who bothered us before (like during Guanta) seemed very taken aback and warm and was flirting with Pablo, who later explained our golpe toward her forced her to step back and change her behavior. **Whenever I see the Indians in court it just reminds me what this is all about -- the historic nature of it. It is touching.**

## **Dec 11**

On plane from Quito to Lago for meeting with Secoya. Had meeting Friday with Asamblea – only 14 of 28 communities showed up. We explained negotiation, issue with politics in Ecuador, how to do negotiation. Nobody wanted to name names. I suggested that they set up a committee of respaldo so people can feel involved. Promised to take it up in next meeting.

The tension between a “professional” negotiation as is done in class actions in the U.S., compared to what this might be, is becoming increasingly apparent. One needs to balance community involvement with the need to have confidentiality among a small group of negotiators so they can have the confidence they need to exchange their views honestly. I think this might blow up in our face if we are not careful. Once we come back with an offer, we will have a lot of enemies: JK and CB for starters, self-interested people in the communities such as they colono President of the Cofan; other lawyers;



people who want some of the money. I could see a situation where everybody who negotiated will be on the heat seat, and they might fire us if we don't handle it well. One thing I am sure of: no matter how many precautionary measures we take, it will be messy – just how messy is the question. They will attack us for selling out, for the lawyers taking too much money, etc.

On Sat, went with film crew: shot the parade in Lago to protect the environment, where mestizo woman dressed up as Indians, plus half-nude woman. Plus we shot two derrames. The first because an 18-wheeler smashed into the pipeline at a curve; the second was sabotage on an African Palm plantation. Good interview with engineer at first derrame – admitted their clean-up methods were inadequate, and said that it happened in April 2005, but they did not get the clean-up contract until June of 2006.

We got word thru the "CIS" (Centro de Inteligencia de la Selva) that Jeff Frazier coming to San Carlos to sign up more clients for CB case. LY went to community Friday morning to put the freeze on that, but you never know what these guys are going to do. Chasing around communities to try to get them to not deal with these people is a monumental expenditure of energy. We need to file the bar complaint.

Things to do this week: finalize PG plan, PG expert; go over Champs settlement proposal; Health action plan; meet with Correa and gov ministers with Raul. Lots to do.

#### **Dec 7**

On plane to Quito from LA for AW fundraiser. One-day trip: great speech at fundraiser (Joe filmed); saw Lily and Achuar from Peru, fresh off great victory (need to find out more about it); met with Ari Swiller, one step away from Bing, asked for 1m and felt like too little, he asked for budget; Berlinger covered it, got some great materials and it gave us a chance to catch up; Russ told Berlinger he wants to come to Ecuador in January. Get Lily demands in Peru: 5% of royalties to communities. How to tie to indigenous communities – one-up Judy.

Problem: email from Pablo saying Jeff Frazier coming to San Carlos to sign up more clients for Bonifaz case. We must deal with this. LY and I are going to talk about it tonite.

#### **Dec 4 (summarize week of Nov 25)**

**Getting stronger:** Situation: Signs that we are winning, getting stronger, are everywhere. Mother Jones web article indicates Chevron is scared to dismiss Bonifaz case because they are nervous they will lose in Ecuador. Correa won; Vargas Pazos to be Min of Defense, Alberto Acosta Min of Energy, sympathetic people and those we know personally in several key posts directly related to what we are going. Key is to write settlement vision document. That is next step: to sell everybody, the team, the Ec gov, and Chevron, on how we can all win from this. Joe meeting Cullen today – I hope we can just do a basic conversation. RH says AG (Borja) will file formal complaint with U.S. DOJ over. We are getting meetings with people who never used to take our phone calls. Key is to continue to build national political support for a solution that will survive any change of administration in Ecuador, but we have to define the solution to build the support.

**Sand case:** Depositions coming in good – our side is much stronger on both issues. When first started, I thought Bonifaz mistake would kill us on the release. Now, it appears we have turned the tide. On JOA, clear from all witnesses it is not binding although still problems with accepting benefits. Dispositive motions getting ready – Alberto Wray affidavit, drafted by Aaron, excellent – will really help us.

**Conf call with Winston:** Had conference call on Monday (Nov 25) with Neil, Eric, RH, and JK. Neil reiterated that in May/June of 04, Texaco became very close to getting the AG to issue an officio saying he agreed with their interpretation of the '95 release – basically handing them over even more riches. Borja suggested the Pres of PE do it, but Texaco worried it would be unenforceable if it came from him. They insisted and Borja got mad at them. All they wanted was assurance local judge would treat them fairly, and protection from the armed forces (later to haunt them in Guanta). In terms of depositions, he said Texaco never thought 95 JOA was binding... both sides used portions of it as referential material only. There are three documents calling it a referential document. But under federal common law, intent is not necessary – could hurt us bad. If the state knowingly took advantage of the benefits, it could still be bound by arb clause. Neil says Sand appears to have a simplistic view. Has made remarks on various occasions about whether to send parties to arbitration. Our best argument is that we dispute that benefits were accepted, and combine it with provisions of Ec law and NY const law clearly limiting what the state can be bound by absent express provisions. Also, requirement of substantiality – were substantial benefits accepted under the agreement.

Eric's view: "If I were the judge, I would dismiss it as a matter of law. Both parties used it to their advantage when they wanted and did not when they didn't want to. Combine that fact with Ec law, and it is not close to being binding. Court would have to contravene established principles of Ec law that requires it to be in writing (their own version of the anti-deficiency act)." Note that when I first met Eric and he started talking about the anti-deficiency act, I thought he was a little out there. He always seems right on the law but overconfident because he does not take into account the politics of Sand and the damage Bonifaz and Collingsworth did to the case. Eric also said the PP deposition, it came out that there were a series of exchanges where Gulf said nothing binding since the 73 decree by the military government. Eric said the 99 law issue is pure



issue of law, and there should be no trial on that issue. That makes me nervous. He also said looking back on Sand's 88-page decision now, it appears he was being cautious, asking that evidence be heard so as not to take chances. He said Texaco's best shot is that Ec law does not really apply. Two key affidavits: one from drafter of 99 law, and their legal expert. Also mentioned a Bonifaz email to gov saying clean-up would be 30m.

**Technical side:** Got Champs report – good job, but fanciful at 3.1b with 50m just to build a production facility. Asked for a Plan B and a Plan C for less money. He resisted when I asked for betting, but he is getting from Katz and his brother. All these tech people don't want to think practically – always shooting for everything. Had conversation with Ann, Mark, Bill, and Dick – same thing. Mark's comment about water systems. They want to overprove the case, just like Russell did, just like Camino did with his 53 samples at the one site. Ann makes good point that we have to create a story. She talks about extensive examination of a handful of sites, drawing arrow to show how surface water contaminated, show discharge pathways, and that contamination not localized. Not sure that approach is what we need right now, when we want to finish the case asap.

**Other issues:** Asking for PG today; working out new contract with clients. VP wants again to back out on deposition; talked extensively to David DeRothschild.

## Nov 20

**Flying home – great trip** one, of best ever on a number of levels. I feel like we have reached another level; some much to keep up with. Three inspections South of Coca and great press coverage combined with silence of Texaco. Two articles in El Comercio – one on second day, one on Monday after last day. They also ran the AP story the first day. On Sunday, they ran an article on Obama that mentioned his involvement in the case. In addition, we have the ltr to the editor signed by the indigenous communities, dealing with the dual issues of Tex lies: about our money, and about the division of the indigenous communities. There are other signs of Tex weakness: we had multiple press releases this week, starting with the inspections themselves; Texaco's 11<sup>th</sup> hour effort to suspend the inspections; the first day of the inspections; PP's deposition in Washington. Did several radio interviews: Radio Municipio (6:30 a.m. Thursday); CORAPE at 6:30 Monday, then Radio Quito at 7:30 (with Luis) and then Radio Centro at 10 for a tape that will air today. Our interview on Radio Quito was picked up by Ecuador Inmediato. We also went out on television: Gamavision, Teleamazonas, and I think Ecuavisa. Plus report on arbitraje, plus local coverage in zona, and HUGE turnout of locals. The Tex people feel pressure: security guy makes obscene gesture to Joe camera crew, puts hands over lens, etc. Teaches u how to define media coverage: the big article in El Comercio was the inspections end, even though Texaco still has ten left. This is a key turning point in the drama. On way to airport, taxi driver said I was much improved. Same guy who criticized me after my last TV appearance with Andres Carrion, he took us to Radio Quito and said I had improved significantly. I think my Spanish is really kicking in: we are hitting them hard on basic themes: 1) we are winning; 2) the trial is coming to an end;

3) they are lying, trying to rip off the country; 4) this is a huge struggle for all Ecuadorians against an evil foreign company; 5) that Tex main defense is delay, and their lawyers are in it for the money. Pending we have Ortiz on Teleamazonas, and Radio Vision – the media establishment for TV and radio, respectively. We actually have built up a huge store of credibility and frankly I think it has a ton to do with the personal integrity of LY, PF, and myself as well as the other members of our team who do interviews, such as Juampa and Julio.

**Great surprise:** Perito dirimente, found thru Reyes, told judge Texaco's sampling was bullshit. Luis and Pablo just found him last Thursday and never told me!

**Three threats: Kimerling, Bonifaz, and Russell/Camino.** Wray sent me email from Jorge Jurado that was very negative about me, and it forwarded an email from Dave Russell encouraging him to sue us. I have no doubt Russell is the one who encouraged Camino to sue us, and he probably found the Philadelphia law firm for him. It was distasteful and reminded me of the stress and disgust I felt so often during those dark days when Camino and Monica were on the team. The big question with Bonifaz is whether to file the bar complaint. And the Kimerling situation is worse: she was at foro in NY, and it appears – based on Atossa's email (she spoke there as well) – that Kimerling's movement to undermine us is gaining strength. Segun AS, she is close to getting the Fecunae (the Kichwa group) behind her. She travels to these international meetings (in this case a U.N. forum) with Moi (made famous by the "Savages" book) and they hold court as celebs and people just eat out of their hands while we do the hard work in the field. As LY says, anybody who buys Moi a plane ticket to an international destination will get his backing.

The Hua are problematic for a number of reasons. They smile a lot, are interested in money and material goods, and love going to the big grocery stores in Quito. Only ones who have visited NY and asked to stay. As Esperanza says, Kimerling is the patrona: "nobody consults with you, nobody listens to you, I am the only one who hears you, I am the only one who cares about you" – with historical origins in feudal agriculture systems of Ecuador. LY said outside the Foro he talked to the Hua and they appeared to be in complete agreement with him; Kimerling then called them on a cell phone and ordered them in to read the letter she had written, where they went in the completely opposite direction. Joseph said they were drunk outside the forum, making fools of themselves, and they drove off in a new \$60,000 SUV. We MUST go visit them. The Frente has been so consumed with the inspections they have lost political power with the Hua, allowing Kimerling the political space to get her "movement" going which put a fancy indigenous name on – part Hua, part Kichwa. She is trying to peel off two of the give indigenous groups from our lawsuit – the most glamorous (the Hua), and the largest (the Kichwa, themselves migrants to the zona). The Kichwa have a base Rumipamba and I am realizing because we have 19 clients there, and Bonifaz neglected it for so many years, this also has given a further opening to Kimerling.

**Had celebratory dinner** (end of inspections) en La Briciola. I saw Carmen Tello kiss LY goodbye, and I knew the vision of connecting the Quito elite with the jungle was coming to fruition. LY made the best toast I ever have heard (get tape from Berlinger).

Had day after staff meeting yesterday. Got lots of suggestions – Joseph on cancer, human issue – need to put face on cancer issue. People feeling pretty jacked. Lauren told me in two years she and Julio would get married, that she had never felt that way. On day of first inspection she quit and blew her top after we wanted to send her back to Quito. Juan was at dinner. They cost a lot, but the dinners are so worth it in terms of building animosity and unity on the team.

**Lupita** has made me realize the importance of management, of taking the time with each person to hear them out, and of setting up structures to people have an opportunity to express their ideas and participate. Lupita told me her nose job (Juan's speculation) actually was Gustavo hitting her; she has been making no money. When I asked what she would need to live independently of Gustavo, she had no answer. Her value is increasing – she knows everybody in the press, and everybody loves her, she is totally loyal, works her ass off, and gets the confianza/movement thing.

**Carmen on Ortiz:** said he is increasingly disillusioned, does not want to be Tex spokesman, thinks they are going down. Callejas the same (although not sure I believe it). She says the more Callejas complains, the more they have to pay him to keep him going. Alberto Wray and Monica used to play us the same way at the beginning of the case. The only people who don't do that are the members of our current legal team.

**Met with Esperanza and Manuel:** they want the Peritaje Global to be focused on the human impact, not the science. Suggested we get a sociologist or somebody else to be the expert, not Fernando Reyes (MP reminded me that he wanted to charge us \$30,000 for some PE documents at the beginning of the case – I had forgotten about that). They had some great ideas, but I am not sure we have time to conduct those studies.

**Talked to E-tech:** starting up the Global, getting PE to fund re-injection wells, etc.

**Meeting with Judge:** on Sat night at Lupe's house. 7 children from six mothers. Had son. Referred to Marx, Lenin, Heidegger, Montasque, Rousseau. Shot 22 times in car – about to lock up Colombian drug dealer. Woman in back of car died. Said Guerra is trying to control the Perfecto de Lago, that Guerra will not be the next president – Novillo will be. A real humanist. Understands Texaco's sampling is full of shit.

**Nov 16**

**Met with Manuel/Frente weak, no want 160,000.** Realizing LY is way behind and the Frente (and therefore the case) risks being left out. Ayer went to Rumipamba and saw Maria Aguinda. After, I gave an emotional interview to Juan Diego where I basically said that in 13 years of work, I can't say we have delivered one tangible benefit to a single person in the region. The case is sucking the air out of the movement. I had not seen Manuel for ages, but I realized we are on the same page: the Frente needs to open up, be less secret, expand its leadership, and reach out to other sectors of Ecuadorian society. Specifically, Manuel's fund just gave 1m to SOLCA to start a cancer center in Lago Agrio; 250,000 to put a water system in Rumipamba; and allocated 160,000 to the Frente to do the five studies for the case. All of this is happening because of the case, yet

the Frente takes no credit. First, segun MP, LY did not want the 160 and has resisted it, not writing the necessary ltr. He does not want the responsibility – this is coming at a time Kimerling is attacking the Frente for not being transparent about how it will spend the recovery in the case and LY does not need an additional problem in this area. To me, this represents a profound lack of vision and courage – take the money, announce it as a victory of all the people, and have a meeting with total transparency. The SOLCA thing really bugs me – the Frente should have a press conference with SOLCA taking credit it for him, and closing out the political space for Texaco to take advantage of the government's sudden munificence. Same with Rumipampa – MP told me they were getting a water system that cost 250,000 because of the case, yet LY in our meeting at Rumipampa never mentioned it, took credit for, etc. These are tangible benefits that can politically strengthen the Frente.

**Inspection on Tuesday:** Get everything from Acta. Overall, these inspections really bother Texaco. They pulled a stunt on Monday – tried to get the judge to suspend the inspection for 60 days on the even of going out to the site. LY got text msg judge was leaving Lago – we had our own intelligence sources. They did this for Guanta, San Carlos, and now Yuca – when we mobilize for press, they try to delay. So they came into the inspection thinking the judge was biased against them. It is incredible how they present the victimization mode. Racines asked Lupita how much we had to pay the journalists to come – the turnout was good. We had three TV stations – Gamavision, Teleamazonas, and a local Lago Station, plus AP, El Comercio, Universo, Expreso, etc. That said, Callejas, Larrea, y Racines slammed us in the last part, and our lawyers were weak. They called me out by name based on the American Lawyer article.

**Things I wanted to say during inspection.** Wed night, after returning to Quito, I had trouble sleeping after thinking of so many things to say during the inspection: helping people, then why carry guns; how much money do you make; give them water to drink; give them food to drink; making tech arguments on fusion because losing the case, etc.; oil doesn't have contaminants.

**Culture – Motorcycle accident.** Yesterday (Thursday) was a crazy day in the office. First, a car hit a motorcycle in the street; a man is bleeding in the street, shaking and about to go into shock, and people are just standing around. The woman who hit him tried to drive off, but a policeman prevented it. There was a medical office on the corner – some people were just watching from the gate, not helping, not even bringing water. Joseph bent down and was helping him. As Joseph said, in Cuba the first car to come by would have taken him to the hospital; in Ecuador, people just stand around and watch. Then, the lights went out because the lady in the other half of the house did not pay her bill. In Ec, the public utility turns off the electricity five days after not paying the bill. Some guy came by and just cut it off. Alexandra said she would come, and never showed up. She drives me crazy; everybody in the office dislikes her. Joseph called on Sunday about his check, and she said to call back during office hours. Then Lupita called an electrician – we paid him \$10, and he turned on the electricity. Joseph, LUpita and I had lunch and talked about how utterly passive Ec culture is. How Sylvia, to get press to turn out, says stuff like, “No seas mailto, ven por favor” -- this sycophantic begging, but as Joseph said, it works. Ec culture drives Joseph crazy. The question how does this

cultural trait translate into politics, and how does it affect or case. And in many respects, the character of Ecuador as a nation is divided between humility and passivity, between corruption and honesty. And the dichotomy plays out in almost everything we do.

**Our leaders as bureaucrats:** LY puts judge and tech team in different hotel. Secrecy of information. Fear of risk. Fear of taking money from Manuel. Fear of putting our demands front and center in terms of the paros in the Oriente..

**Meeting with Judge in hotel:** On Tuesday night in Hotel Auca. With Lupita, late at night: he said our intelligence is bad; how does Texaco know what we are going to do before we do it (citing our meeting with him several months ago with APV, PF and LY) – he said they told him three days before that we were coming. Said Pablo should have interrupted Texaco, to create an incident, during the pathetic Tuesday inspection. He asked for help on issue of visa for girlfriend to visit New York.

**Nov 10**

On way to St. Louis, then down to Quito.

**Raul still not been paid.** I am convinced, as is APV, that the JMB himself is the one sabotaging the payment. He does not want the next gov to come in and accuse him of financial improprieties.

Press conference yesterday in Quito: First time, team did it without me. Really working well, although nobody showed up because of 3-4 competing press conferences.

Did health annex and graficos for inspection. Joe transferred money. Had conflict with AW about not posting releases.

**Nov 7**

**Election day in US; Bat Mizvah this weekend. American Lawyer article comes out.**

**Kimerling before Sand:** Kimerling in court yesterday before Sand. She was dinged. I felt proud of her in an odd way. Her colleague Vance did most of the argument – they came in in the bottom of the ninth inning expecting to hit a grand slam, when they should have figured out a way to get a single and just get in the game. Her papers were good and I think her argument helped us sensitize Sand. As I told Neil afterwards, he now has two guilt things hanging over his head that should help us: his denial of Kimerling, and his denial of the motion to extend, which eliminated the fraud defense. This backs up my litigation strategy of filing losing motions to create leverage. Get Judy's notes I took in court.

**Kohn meets with Cullen:** On Nov 1, they had conference on another case. Am Lawyer article had come out, where Cullen (stupidly from Tex standpoint) talks about how important the case is. Joe established the contact. Joe said RRV could not be at any discussion, and Cullen said, "The problem with Ricardo is that he knows everything, and he doesn't know when to shut up." He told Joe that "management would like to put an



end” to the litigation for a reasonable price. Said he is dealing with a “Scott” two levels about Ricardo. He said a problem is that there is no business unit in Chevron where the money would come out of... said we need a business person there. When Joe asked why King & Spaulding had never brought up the arbitration claim, he said they were not too smart. As I told Joe, this is important – we need a voice of reason on their team who can push back against Reis Veiga and advise the company in a clear, sound way. Maybe Cullen, obviously a well-liked man of integrity and former partner of Edward Scott, could be this person.

**Conversation with Atossa:** Called me at lunch – had long talk about the Achuar and the Kimerling threat, and the Frente’s lack of leadership. Said Kimerling was really a threat and the transparency issue with the Frente and a potential recovery is a problem. I found the conversation disturbing on a number of levels. We agree she would write an email outlining need to take over oil fields and deal with Kimerling but still no email.

## Oct 27

Heading to Jax today for Fla-Ga game – the ultimate escape and boy do I need it.

**Meeting with Alberto:** After the Moscoso presentation, I was beginning to feel resistance from Raul on the possible PE lawsuit. Alberto convinced me otherwise, and reminded me how brilliant he is. We met in conference rm – me, APV, LY, PF, and JP. We asked questions, and he pontificated (“al ver”). Said he saw dangers with either Correa or Noboa – with Correa, he said he would never settle with Chevron for political reasons, and that Noboa might give up too early for the same reasons. He said Texaco is surely calculating that a Noboa victory would make it easier for them, so they are probably going to hold off on doing anything until they can see whether they wiggle out of this under a Noboa administration. On the other hand, he actually thought Noboa’s election might help given that Noboa wants to solve these types of “foreign investment” problems. AW is super-tight with Noboa’s VP, Tayano, and his right-hand person, Angeltia Alban. Amazing how we can now play ball like Texaco does, because we have contacts everywhere. These are AW’s main points:

- He said take advantage of the short window we have with PE before the election is over. We need to get the documents from PE we asked for in the beginning of the case, that they never provided. We can also get PE docs from the discovery from the Sand matter authenticated thru PE, rather than Winston.
- He also said to find out from PE what class of technological changes they introduced when took over concession, such as the raising of the gas flares and the re-injection equipment. And to get informes quejandose about the remediation.



- Moscoso lawsuit, he was thinking out loud: “I see clear advantages” and then runs thru the various issues: contract, actas, contract not executed by PE because never did remediation, validity of actas final could be attacked . Goes through how they never really remediated, they just threw dirt over the pits, and that therefore the release has no value; then says the other way, but more difficult, is to attack the problem thru environmental law principles rather than contract law principles, that persist contamination in the soil and water, and there is no expiration of the SOL, thus ask for “nulidad absoluta” of the actas which released Texaco. Then said it would be “poco viable” if PE pursued case along, that the State (through Borja) would have to do it with him because the State’s hand would immediately be forced. Then he said he did not think it would be worth the risk, as the new government would immediately withdraw it, and that would end up causing more harm than good to our cause.
- Talked about issue of finality on settlement. Alberto said we could use the 1-yr SOL issue after *Aguinda* was dismissed. Therefore, Chevron could effectively invoke SOL as defense to any claim. I asked about SF judge ruling in Cristobal case, and both APV and AW said that was wrong as a matter of Ec law and that that ruling never would be made by an Ec judge. AW said the gov would never offer an indemnification of the type I talked about with Raul (see initial draft settlement proposal), and never indemnify lawsuits against personal damages, which we did not sue for anyway. This bothers me, because they are going to want finality and we are going to want funds to provide our clients for health damages. If Texaco could never get finality on ind claims, we will never be able to negotiate a fund for health damages and our clients will be left to their own meager devices plus the vagaries of the Ecuadorian judicial system. In other words, they would never get a recovery. The idea of the Congress passing a law to provide finality was met with the rolled eyeballs look. Impossible, like so much else in Ecuador. AW made it clear he thought gov would never give an indemnification. While I give deference to that opinion, I find AW analyzes things as they are – not as they could be after lobbying and political work, which seems to never enter his calculus. He has no clue of the extensive relations we have established with PE, for example.
- In terms of gov indemnification, he said contrary to the government providing an indemnification, they should do the exact opposite – make it clear they would fight any action. But he did have a good idea: that we take the 10% that under law was destined to go the Frente, and that the Frente spend that on a health damages fund. The other fascinating idea he had was to create a fund with Texaco’s money, but the State would assume the obligation so Texaco would not have to recognize the rights of the demandantes. Generally, he liked the idea of the gov putting in.

**Noboa – Correa:** Saw Noboa on TV – press just transmits these informal press conferences. First, microcredit with PRIAN on the paper – asks people to fill out. Then people fill out papers for new houses – promises to build 300,000 per year. Carlos Vera had expert on to show utterly impossible, but rest of press just reports with no criticism.

Refuses to debate. Acts like Correa a Commie – shows paper of Communist party endorsing him, and then asks Carlos Vera why he doesn't investigate. The man is not a payado, as LY said – he is highly intelligent, focused, and he knows what he is doing in playing the populist card. My scenario is he will be the tool of a right-wing, army-led repression that the CIA has been hungering for given the incorrigible Ecuador populace that does things like throw out Gutierrez. Correa on TC had 30-minutes interview and I was transfixed: he is immature, emotional, thin-skinned, and not nearly as radical as his opponents paint him or as he appears. Using terms like “savage capitalism” do not help. Dumb questions by periodista, like are you going to cut relations with U.S., are you a communist, why don't u call the FARC communist. Noboa is radical rightist: wants to privatize PE, social security, water, extend Manta, join Uribe in fighting the FARC. He is a U.S. dream. But given what I know of Ecuador's politics, he won't be able to do these things without provoking massive resistance, which could lead to violence. Will he be another in a long list of idiot-Presidents? Why can't Ecuador produce a statesman like Mauricio or Alejandro?

**Meeting with Vargos Pazos and daughter:** B'fast at the Hotel Quito. Humbled by Correa problems, canceled deposition because of campaign (I helped resked it for Dec 1) and still asked for money. For example, he and Alexandra need \$7,500 to broadcast ads to indigenous peoples, hold press conference with Noboa ex-employees, but they don't have it. We did manage to give her a computer. Alexandra, whom I love for some reason – rough around the edges, but smart and principled – told the story of how Noboa exploits small banana producers, of which they are one. Sets official price, then forces you to accept less money if small producer or doesn't buy from you. Then, he has number of options – other buyers offer less, and they either represent him or then sell it to him for a higher price, but still lower than what he was obligated to pay; he loans money to get leverage over a small producer, and then goes to court to get their property directly; rejects product for some illegitimate reason, forcing you to sell for less; gives you a 3,000 check, but then forces you to sign a document where you pay back \$600 of it for whatever reason (like “legal costs”). Tells story of Japanese producer who was exporting to Japan for \$7 a caja. Noboa approached him and said he either had to sell to Noboa, or Norboa was going to flood Japan with Ec bananas, forcing the price down.

**Meeting with LY and PF on last day:** Talked about settlement and Global Peritaje. Trying to empower Pablo Fajardo to totally take over inspections – I am simply out of time, and incapable of doing it from States, plus Pablo did a great job during San Carlos under a lot of pressure. We talked about key issues with settlement: who would be on team (thought that maybe LY should not be there to protect him politically). Then PF said he did not want to be there. While I thought LY not being there was a good idea, upon reflection I cannot imagine being at those meetings without him. The other issue is communicating with the bases. PF suggested we get the Asamblea to approve and authorize the negotiating team, but that should be done NOW. While we have made tremendous progress in getting our team and position together, they seem to have done nothing to prepare their part of selling any acuerdo to the communities when people like “war paint” Kimerling and Bonifaz and others, like Quenama, will be ready to pounce in

order to hold hostage any acuerdo so they can get a piece of the action. (JK wore Huarani war paint to the Foro last weekend.)

**Achuar:** Get AW press release. Won acuerdo in Peru to re-inject. In other words, they accomplished in two weeks what we have not been able to accomplish in 13 years! How frustrating is that. I ran it by Lupita and she said connected it to the Inca mentality, and the Incas and then Peru and now the U.S. had dominated Ecuador, and the people have a “sometido” mentality. It just blows my mind that all the protests in the Oriente, and this never became a demand. It shows a complete lack of vision and leadership. When I brought it up, PF and LY were useless. PF is worried it will hurt our case, because Texaco should pay (Oh My God) and Luis said he never thought those types of acuerdos would ever be complied with. Really, really defeatist. The problem as I told Atossa is that the case has taken on a life of its own, and become an end of itself. It has bueurocratized us to a large degree, and has sucked the energy out of the popular movement. This types of actions mobilize popular movements, and I am worried not doing this type of thing will really come back to haunt us when our “dirigentes” try to sell any aucerdo to the bases.

Achuar, Vargas Pazos (PE resolution open-ended, Bill Powers

**Raul and Borja:** Fascinating how Raul has led his client. Borja an idiot – use argument of APV before the Interamerican Commission as example, or all his twists and turns over the Oxy issue, or the fact he orders for Raul at restaurants and tells him not meet with certain people who can help the case for whatever whimsical reason that he thinks they are “ratones”. One such person was ?, who knows Noboa and is the brother of somebody. Raul was going to meet with him, but then backed off when Borja called him a Raton. The famous “twins” are also an example. Not only have they had extensive plastic surgery, but they get chauffeured around in Daddy’s car with his security and when they got stopped by the police they pulled the “do you know who we are” line. Lauren was in the car, and she said it was completely obnoxious.

## Oct 25

**Raul money:** Spent a lot of time with Raul. His payment is in the Kafkaesque world of Ecuadorian finance. Saw Moscoso. The payment finally got to the Min of Finance, but then they needed to pass a resolution authorizing payment. So the sub-minister of finance at PE talked to the sub minister there... the bottom line is he still has not gotten paid, yet he claims Friday is the absolute deadline or they will withdraw. He wants me to bring back the signed resolution and get it to him by Friday so he can show it to his managing partner. Yet the way Raul is working it does not sound like he plans to withdraw. Culturally, he just gets it. He approaches every interaction with class, optimism, and respect. And the bottom line is he is going to get paid a vast sum of money because of it. He finally got a copy of the famous agreement between the Min of Finance and PE.

**Raul generally:** I marvel at Raul. He got in Sunday night and immediately had dinner with Ivonne Baki and her crowd. She is angling for a Min of Foreign Affairs post under a Noboa administration. God, the sliminess blows my mind. The Gutierrez forces and the Noboa forces are joining together, which means the old Gutierrez crowd will have some cabinet posts. So Baki sticking with Lucio through thick and thin, going to the States after he was deposed, is going to pay off perhaps. The important thing is Raul was working her to protect the Texaco case should Noboa get in. Certainly Chevron will approach them immediately, and they probably have already. I remember I saw her at the Hotel Quito pool after Lucio was deposed, and I felt like laying one on her. I am glad I did not, because now she could be our ally.

**Moscoso:** Finally got to meet him. At first meeting on Monday, asked if we thought PE should come in to the Lago case. Issue arose if they should sue Chevron civilly on the fraud charge. Came back on Tuesday and made presentation. Raul talked to Eric and Neil and not surprisingly they do not like the idea. We LOVE the idea. This is a historic oppty, never before presented, to get PE behind us – to finally turn around the dinosaur beaurocracy that had been Texaco's ally for decades firmly to our side. Galo, Vargas Pazzos, Moscoso – our allies are firmly entrenched at the top, and the window is short, as they will all be replaced in the middle of January. Such a lawsuit, to be politically viable, would probably have to be filed before the second round of voting on Nov. 26. Raul is sort of opposed – we set up phone call for Thursday. I am going to get Joe Kohn and Alejandro on the call, and we are going to do our best. The reality is they have the power to kill the idea. In legal team meeting ayer, I explained to the team that their primary interest is the interest of their law firm, not the cause. And that is a difference in our interests and focus. APV says we should do the lawsuit anyway, to force Borja to take a stand in Ecuador that a fraud occurred (the filing in the U.S. has had little impact on the Lago case). Lupita came in with RH because she told me during the Foro over the weekend, where he was a judge in the mock tribunal, he was flirting with her.

**Settlement:** Went over plan with Raul during lunch on Monday with Luis. I really see Raul as our ticket. This is complicated. We need RH for the settlement agreement, which I finally went over with him in detail in trying to stay ahead of the curve.

**Working group:** They had meeting with Galo last Thursday, all the top officials of PE, plus LY, Pablo, and two dirigentes at the community level. They created a GRUPO Mixto, which came from my memo earlier in the week. This needs to be finalized so it is up and running before Noboa comes in. This is the seed that will allow us to work together on a remediation, and allow the government to pitch in. Said Galo actually visited the pits, and said Texaco did a bullshit remediation. This is awesome! The respect LY and our team is getting at the highest levels of government is impressive. Remember, Palacio is the one who finally ordered the Winston bill to be taken care of.

**Legal team meeting:** Planning November inspections. Bringing priest from Spain to testify about indigenous destruction. Misdirection to Texaco – saying we have special witness from government who will testify about fraud during the remediation. Lupita robbery, me pushing the team to see it as something worthy of speaking out about and exploiting, but Lupita had not even made the denuncia. Julio did not think the facts were

worthy. I explained five people lined up and speaking would be very impressive. I said, what do you want to wait until somebody dies? Harassment by army of people who were biking at Forum, German guy who had his tires slashed, Mateo was assaulted by well-dressed guys in camineta, Isabela Figueroa is being followed for her work against the mining company. TALK TO AND INTERVIEW ISABELA FIGUEROA. I asked APV if someone might get killed someday – he said he did not think so. “Not at this point – the case is too well-known.”

**Work:** Feel overwhelmed. I need another lawyer. I have the annexes, the settlement issues, the intervention in Sand and SF, the Bar complaint, Miles and the FCPA complaint, the Fraud memo – we have to get this stuff in.

**Oct 23**

**In Quito.** I was feeling pretty good getting in, the trip was smooth, got in early, and had dinner with Juan, Lupita, and Lauren at the Sushi place where I ran into Steph and Andres.

**Juan's analysis of the election was really distressing.** There was obvious fraud – votes were taken from Correa and Roldos, and given to Noboa and Gutierrez. The Brazilian company that did the electronic counting did not count the last 30% of the vote, and they still haven't revealed it. Around 11 p.m. Noboa was declared the winner. He then got on TV and blasted Correa as a Communist, saying Ecuador did not want Communists, etc. Everybody I know is demoralized... nobody is protesting, people are focusing on the second round, and everybody thinks it is inevitable that Noboa will win. Why do feel the hand of the CIA behind this? How bullshit is this? Calderon, Bush, and now Noboa. They simply will not let a leftist win. It is a raw power game. The Oxy case will end – they will give the oil field back, try to settle Chevron, sign the TLC, etc. As Juan said, geopolitically it just became impossible for Correa to overcome the U.S. They would not allow an ally of Morales and Chavez in Ecuador. Juan says in Bolivia, the military and death squads are starting to do to Morales what they did to Allende.

Met Glen Goode, the gold miner, on plane. Story he told me about the \$7 million fraud, how business is done in Ecuador... need to interview him for book. Talked for three hours. He explained families behind every pot of wealth. Andinatel, Pacifictel and cell phone monopoly. Banking scandal. If I nail both of those, I can capture the corruption and people can understand Ecuador. Also, add in Alexandra Cantu, Ivonne Baki with Miss Universe, Lucio's appointment of brother to Corte Andino... how many examples are there?

The foro was successful, but Judy's letter and stunt was really depressing. Get more details.

Lots to do today. Juan says morale in the office is terrible because of the money issues.

**Oct 20**



Heading to D.C. to meet with Winston and to get updated on discovery. Don't know exactly why I am going, given that we have no staff capacity to absorb and integrate the thousands of pages of documents that Chevron has turned over. The key is to find nuggets, catch up on the deposition testimony, and talk to Raul about settlement terms.

Feeling very dark right now: the fool's errand problem. Ec still has not paid the Winston bill. LY and team were skedded to meet Monday with Min of Finance Rodas, but he resigned that morning. Raul Moscoso told LY he had signed the payment agreement between the Proc and PE before he resigned. Later, Raul found out he had not signed it, and according to Raul, we are back to Ground Zero in terms of trying to get the bill paid. Raul has surely lost all credibility with his partners now; we already have lost the fraud claim, our main leverage. And now that might withdraw altogether. If that happens, I might be out. This is ridiculous. People get the country they deserve, and the people who run Ecuador are largely a bunch of clowns. I sent an "emergency" email about the Winston bill and APV wrote me back saying he was in D.C. litigating the human rights claims and that Jose Maria Borja was defending the state, and he did not even care if the state lost, that he does not take his work seriously. Nobody in Ecuador understands the seriousness of the threat (on our team), and nobody who has the authority to pay the bill in Ecuador cares enough to do so. And can you really blame them – who else there would want to millions to Raul? The image of Noboa in the Bishop's outfit giving out trinkets just makes me feel the entire country is one big joke.

The meeting with Joe early in the week left a bad taste in my mouth... we still have the same money problems, and nobody has been paid. All the elements are in place, and there is nothing we can do about it. Charles Champ is going to be the hero, I feel it. He is the key element. Winston is a key element, but they have been weakened. On our last call Eric read some of the best documents from discovery from Chevron's standpoint and they were bad for us. Their fraud claim is weak. I need to spend significant time in Ecuador, but I am really feeling the pinch with my son and the family. The money issue is killing us. Pablo told me the inspections are now going to finish the week of Nov. 13, which is soon – there is a ton of work to be done before then.

Saw Barack Obama on Wed night (Oct 18) and it was inspirational. Got his new book, and we talked.

**Oct 17**

**Joe in Philadelphia:** Met with Joe in Phil... still in dire straits. Kathy the money woman said Joe's father never would have refiled the case in Ecuador. "When is it going to end?" she said. Karen Wilson also had the same querying look. I told Joe at lunch what Kathy said, and he said his Dad would have said go to Ecuador so they would never think we would give up. Did not help that Joe had \$2 in his wallet, which he left for a tip, while I paid for lunch for the first time. I presented him memos: debts include 87,000 to me, 117,000 debts in Ecuador, and an estimated 790,000 to finish the case not including



my invoices and expenses going forward, which would bring it up to 1.2m... assuming it all works out. Joe said he needed to wait until Nov to get another fee, and just had another case dropped in his lap that could generate 3m in fees pretty quickly. Contrast with me sitting with Raul with Ecuador's AG trying to collect the 3.3 million bill... and dropping the fraud claim over \$50,000, and give people on our phone call yesterday to listen to moi... and setting sites on 10m in fees, based on what Ecuador paid for the London arbitration. Joe promised to send 10,000 to APV pretty quickly... 10,000 to Quito... and take care of my expenses. Charlie will have to wait until November, although we can do his contract now. I emphasized we have all the elements in place, just that we are waiting to activate when the dollars arrive. Thru it all, I love Joe: in sandwich show, met DA Lynn Abraham and head of Constitutional Center – and Joe joked in introducing me that I was working on the case that he used to talk about in his campaign twelve years ago. Told him I planned to go see Russ in London, so we will see if that works. I ran by the CB bar complaint and he got nervous because he was on phone calls and in paper loop during CB's representation of the government. Said he did want to file the affidavit in San Francisco... will try to do thru Miles Ehrlich, whom we are trying to bring in via the FCPA and SEC stuff.

The Kimerling intervention is delicate. We want Sand to embrace her facts, but deny her motion. Joe said he hopes Chevron sends her a Rule 11 letter, as they should. On the other hand, they might want her case here so they could go to Lago where they are losing and tell the judge the issues are being litigated in New York. The state and us want the opposite: Sand should not touch the issues because they are being litigated in Lago. What a legal mess... totally confusing, and only because Sand has no clue because of the clever presentation by the Chevron lawyers. Joe agrees we should file amicus, signed by Alejandro and Alberto, in the Sand matter, stating these are our claims.

Feeling a little bad about raising issue of possible future conflict in the Winston call yesterday... but I wanted to appear completely up front. I am worried I unnecessarily undermined some of their confidence.

**Oct 16**

**One-hour conf call with Winston: Kimerling doc presents issues – gov cannot slam her, must embrace her facts... but limit it to intervention as amicus on narrow legal question of '99 law. Kimerling put it all in but the kitchen sink... this was her chance to download ten years of frustration from being excluded. Makes her a player... the return date is Nov 6. Chevron will definitely slam her. But, how does she get around Rakoff's FNC decision? Her thing is so overbroad... just like Cristobal's papers in the arbitration case, which led to the waiver of sovereign immunity. I explained that her clients are a tiny sliver of the class we represent, and**

that we arguably represent them... They asked why she would do this, and I explained she was not well. So hard to get people to understand without it seeming personal and thus diminishing all of us. Obvious also she would never be able to fund this litigation, even if Sand granted it. She basically wants to re-create the Lago case before Sand.

Situation with Noboa: it is clear that if we don't get our act together and insinuate ourselves with his campaign, there could be a major risk he will order the new AG to settle the Texaco case in New York and cut us out. I talked to LY today and he is upset about Noboa, said the people have been deceived by his promises of housing, gifts, etc. Neil said why would the government ever change its position given the facts and the legal liability. Neil still doesn't get that we are in a Funny House... as he said, why should you count on anybody in Ecuador being rational. Could lead to conflict between us and Winston.

Work with Winston: help with depositions – Reis Veiga, Perez Pallares upcoming. They are going to send us outlines. Plus hot docs on remediation – must go to D.C. and check out, but our staff so thin. Right now dealing with Kohn meeting on money tomorrow; settlement memo; Bonifaz affidavit for SF; Bonifaz bar complaint; amicus brief for Sand; get our own affidavit.

David du Roth called—said in touch with Jolie and Pitt and wants to come in Feb. Wants to create conversation, not point fingers. Yea, get it buddy.

Talked to legal team. Took hour to set up call via Skype bringing in Aaron from Cairo. Uggh. Frustration – the OCP case is taking precedence over ours, and it blows my mind that Pablo just takes it up the ass again. On top of email I put: Atacamos o estaremos atacado. They just get into their comfort zone and have no regard for Joe – their stupidity, they think it will just go on forever.

Oct 15

The context is very uncertain right now. Noboa took first place in the election, with Correa second. Appears to be fraud. If he wins, we are fucked bigtime.

Kimerling files motion to intervene in Sand. Says Lago plaintiffs do not represent her clients. Poses a number of dangers to us – if he grants it, she suddenly becomes lead attorney asserting our claims. Makes me feel we erred in not intervening ourselves.

Raul said on the phone Friday that the failure to pay led to the withdrawal of the fraud claim. I am still smarting from that.

Oct 5

Key legal move: presenting no divergencia memo to judge, which is our first step toward really convincing the court as to our theory that the parties do not disagree other than the legal interpretation which is purely the province of the court.

Talk to legal team. Julio thinks Tandazo is paid by the CIA or directly by Oxy. I just thought he was stupid, although someone with good intentions.

Oct 4

Cristobal: Cristobal has hearing in SF today. Sent letter to Jones Day SF lawyer dated July 11, begging for settlement and claiming he represents the Lago plaintiffs still because the Frente had no authority to fire him because they are technically not the plaintiffs. How infuriating... we were holding off on the bar complaint... Aaron is working, and I am intent on filing it. The man is nuts. He has nine clients now in SF. Alsup's dismissal of the previous complaint has led to his abandonment of the class action. He is trying to hang on desperately, by a thread, in the event there are settlement discussions so he can be a part of it. But with his nine clients, he won't be a part of it. The more worrisome thing is he is going to use his old contracts as a way to strengthen his fee claim and challenge the Frente's authority to negotiate a settlement on behalf of "his" clients. In response, we are getting letters from each of the 47 firing him. He was an idiot to put his cards on the table. We will now seal the issue so he will have no standing. The man is desperate and pathetic.

Winston: They are now staking their entire case on the legal issues, but Aaron has his doubts and thinks they are overconfident. I agree – remember the conflict of laws issue. (See Aaron email from today.) I told Neil and team to be ready for a Rule 11 motion from Chevron over the withdrawal of the fraud claim. Neil says unlikely; I agree, but I would not put it past them. Had a huge laugh with Raul on phone this morning about 500 protesters outside JMB's office. He thought they were us. I explained we keep it among the dirigentes because it is hard to mobilize the masses to force the gov to pay a multi-million dollar bill for a U.S. law firm when they are making \$1,000 per year. I told Raul we would not abandon him. He just got back from Nicaragua, where he was helping with a canal project.

Luis: Just got off phone with LY. The issue with CB is making him physically ill – he has a headache and feels dizzy. He literally has a physical reaction each time we deal with Cristobal. It is crazy. This is going to be a tremendous amt of work, and a great distraction – which is exactly what loco Cristobal wants. LY explained that Raul Moscoso is now the Procurador of Petroecuador – that guy in the meeting last week, Pinos, is out. This is a huge break for us. I took the oppty to launch into a long talk about the importance of us coming up with settlement plan and lobbying the government and Chevron it. This will never happen unless we pull it together

and lead. I told Luis la “Guerra” can never be an end in itself, that it must be tied to political outcomes and that is where we have fallen short. I am determined to solve this problem soon.

Joseph launching English-language Frente Website today.

Oct. 2, 2006

Had huge talk with Neil and Raul last Thursday (Sept 28), day after I got back from Ecuador and day before the move, over fraud claim. I was all geared up to talk him into maintaining it, but I sensed I was losing ground as the Sept 21 deadline for authorization for them to hire their expert had passed and the reality was . So, the combination of the Ec gov’s inaction in failing to pay the WS bill, combined with WS’s lack of patience as a corporate entity, plus Neils’ fundamental conservatism, was leading to a terrible result by taking out best argument off the table from the Sand litigation.

On the phone call, I asked Neil to explain his position and shockingly I found it persuasive. He basically said he felt very confident on the contract issue, and felt he might win in on summary judgment or at least at trial (I think I remember the same level of confidence around the conflict of laws motion which he got slammed on). He said the hidden pits issue had gone from a potential major positive to a potential major negative. First, the time issue made him very nervous that he would not be able to complete the work by Nov 1, and it would piss off Sand and thereby boomerang back to undermine the one strong law claim they have. Further, he said that they could not find a witness in Ec to testify as to reliance. He was worried if they did all the preparation (even without the time issue), without a witness Sand would really punish them and even sanction them for leading Chevron down this path knowing they did not have a witness. Given the kookiness in Ec, I can understand it. On the other hand, this was their main weapon over Reis Veiga and the company, and it had been reported widely in the trade publications and in Ecuador. But Neil is a very traditional lawyer and does not consider things like press and negative publicity. This could play really bad for us, but we agreed to ameliorate it by WS sending a ltr to Sand saying it was being withdrawn not because it was not valid, but for reasons of stringent scheduling set by Sand.

The limitations of WS are becoming fundamental. We have such different cultures. Here they bill 3.3 million, and they cannot front their expert \$50,000 to cover his initial retainer while waiting for Ecuador to pay the bill. Raul is very clever – his main concern is that the bill get paid. He did the fraud thing and billed the fuck out of the time it took, and now – even though he is going to collect – he is dropping the claim. Amazingly savvy, but something about it really bothers me and gets me down. Lauren told me Manny and crew basically ignored her the rest of the week when she was trying to collect the denuncia document. Why do I feel like Raul is going to screw us in the end of the day via the negotiated settlement issue? His

reaction by email today to my idea to file the FCPA complaint on the day Sand is notified of the withdrawal of the fraud claim is just another example of his utter conservative approach to litigation.

Neil's worry Sand might sanction them is another example of how utterly wimpy they are. Chevron mocks the gov of Ecuador, and they won't fight back! When Chevron threatens sanctions, they fold. Chevron wants to win at all costs, whereas the gov of Ecuador simply has no skin in the game. The people making decisions for the gov do not care. There is no personal price to pay for not acting. For Reis Vega, this is his life and his career, and he has billions of dollars to enforce all of his legal rights. There is just a complete asymmetry and I realize Neal does not get it.

Lauren made a series of charts on the divergencia issue for the dirimente reports. In Lago, this will be Chevron's next line of attack to delay – to insist on expert reports for each inspection. This is a key issue, but I feel pretty good about where things stand.

I often feel, and perhaps now more than ever, that we are being absolutely overwhelmed with events. Aaron checked in today to inform that Cristobal's case in SF is still active, and that he used an email from Luis to blame Callejas for getting in the way of his attorney-client relations. He is truly crazy, and there is no way Chevron is going to settle with us as long as he is around. We are going to file the bar complaint against Cristobal. The money issues are getting terrible – still about 100g in debt in Ecuador, the inspections coming up, needing to pay Champs, file the FCPA comp, pay E-tech for the Global, pay off HAVOC, pay our regular expenses in Quito, pay me... the entire thing is an utter disaster. We can't move the case without money.

I insisted to Winston that they get 5-10 people to sign the law affidavit.

Sept 27, 2006

Two-day emergency trip to deal with Winston bill and the possibly horrendous consequences. Facing grave crisis – if bill not paid, Neil making serious noises about withdrawing the fraud claim, which is the best thing we have going. Expert reports have to be in to Sand by Nov 1, and now there is hardly anytime to factually develop the fraud claim despite all the work we have done. The expert is not even hired because JMB has not authorized a \$50,000 payment while they have an outstanding bill of 3.3 million, 1.1 million of which is gastos. Winston does not want to lay out any more money, and I can't say I blame them totally although I find their attitude aggravating as well. I also think Raul is in an incredibly stressed position in his firm, as this bill is the largest receivable. Further, Raul and his team have gone out of their way to push this fraud claim aggressively, and I admire the way they lead their client over this terrain, when their client would never now how to navigate it alone. When I look back, I am still amazed we actually sold Winston on the fraud claim – and this dates to that pivotal phone call from Quito last April when we confronted them on the disastrous conflict of laws papers and Sand decision. Of

course, at that time they had no idea their bill would not be paid, although given my experience in Ecuador I always thought this would be a problem. They had no experience in Ecuador – they were used to real countries, like Venezuela and Argentina, that actually paid their bills. I always felt RH was a little naïve in this area.

Moving this Friday (Sept 29), so I really did not want to go this week. I went because if I did not go, and they withdrew the fraud claim, I would be kicking myself for not doing all I could do. So I went. LY was preparing over the weekend. We spoke on Sat, and he was organizing “the dirigentes” to come up to Quito. Like so many times in the past, we would have to pull one out of our ass, estilo Ecuatoriano – like the time in the 1990s when the people took over the AG’s office to force the government to take a more assertive position before Rakoff. I took the overnight flight to Guay, so I came in pretty tired when I showed up at 8:30 directly from the airport. Raul had flown in the day before, and we had planned to meet at my office at 9:00 to coordinate strategies. I also called Vargos Pazos over the weekend to set up a Monday meeting, and he of course was happy to receive us. He is a good friend of Galo Chiriboga, and his new position as VP of PE put him in a strategically important position to help us. (VP is, among other things, tight with the Chavez regime and thus is tasked with a negotiation with Venezuela to build a new refinery in Ecuador which would have huge geopolitical implications.)

It was clear we had to meet with Galo Chiriboga, JMB, possibly the Minister of Finanzas, and even the President. Part of the problem was pinpointing where the power was to sign the check, because RH didn’t seem to be able to figure it out himself. One theory was that JMB had the money, but he did not want to spend it without authorization; the other theory was that PE had to spend it, as they were a defendant and client. Yet others said Rodas, the new (and 4<sup>th</sup> in two years) Minister of Finance was the one. And hanging in the shadows was this idea that Jamie Varela, Chevron’s Latin Ameica chief, was now living in Quito and possibly was a dark force in PE trying to make sure Winston’s bill was not paid. When I first suggested this to RH weeks ago in an email, I felt sort of stupid – like he would think I was paranoid. But I have never felt Winston adequately comprehends the nature of hand to hand legal combat with Chevron. Chevron wants to do whatever it takes to win, regardless of cost, and they are willing to cross the ethical line to do if they think they can get away with it. And in Ecuador, they clearly think they can make up the rules and get away with it. But now, RH says he is convinced that this is what Varela is up to despite their charming exchange of hellos a few weeks ago in a Quito restaurant.

LY via a contact (find out who) got us a meeting on Monday at 4:30 with Galo – kept us waiting for 90 minues, tried to shunt us downstairs to meet with the Proc, until I put my foot down and said we are not leaving, and we stood in front of the elevators (I had been dozing when we were told to go away). We knew they were going to a 6 p.m. licitaciones session at FLACSO. When Galo came out, he realized who we were and much to his credit he brought us into the conference room and we all sat down. LY, Robinson, the Siuna leader (get name), the woman from



Shushufindi, Lauren, Julio, Juan Aulestia; Galo had Pinos, his Proc, and a couple of sycophantic aides. Julio started and laid it on him, and that was not a good idea as Julio was very aggressive, impressing upon him the interests of the country, etc. Galo came back and ripped JMB – why should I pay if I did not sign the contract? Why has he not shown the institutional respect to even explain it to me? I have debts of 241 million, and I don't even get my own money. We are not a normal company, all of our money goes to the Ministry of Finance. El Proc gets 1% of the monto of all public contracts, and we sent him 17 million just this year alone based on contracts we signed.” I was surprised that LY did not weigh in, I was kicking him in the leg. I spoke as well, and calmed things down. Julio basically turned up the heat, and I did not think that was the way to go although I admire his guts. It just looked bad to have a 25-year-old tell a 55-year-old minister what he should be doing with that kind of attitude. On the other hand, sometimes I think pushing people to leave their comfort zone can be productive, but not sure this was one of those times. Our idea was to get Galo and JMB together to figure out how to split the pie. The meeting was not good, but it clarified things, and we left with the opening for him to meet with JMB. It looked like this could happen without Rodas' involvement.

We then went to Proc office and met with JMB (LY, Julio, and myself – we downsized the group). I remember the office from a previous meeting years ago – dark, foreboding furniture, bar code labels still on some of the furniture. Raul was in meeting. A couple of young aides kept coming in and out, and a bevy of secretaries and helpers were out in the front room – it looked like a harem almost, and after meeting JMB, it was clear this was a man who liked to be in charge and give orders to people, a person who liked to surround himself with “yes” people. RH even told me when JMB took him out to a restaurant, he insisted on ordering for RH. Classic Ec b'cratic showdown – JMB said Chiriboga should pay, so they were at a standoff, but at least they both recognized that they were obligated to pay, and that it was in the national interest to pay. Julio told him that Galo was resentido, and JMB listened carefully. Amazingly, JMB stood up without saying anything, walked back to his desk piled high with papers, and put a call in to Galo. Galo was not there, but I admired the gumption. JMB is extremely smart and sophisticated in Ec bur politics. He had just sent a ltr that day to Palacio with a kind tone but confronting him on that idiotic ltr that Palacio sent to the arbitration tribunal on Sept 1, that had to come from Tandazo. Supposedly, Alberto Wray had been in the tribunal meeting with them when the letter arrived, and he was mortified he had not been told. Yesterday (the day after our meeting) it was front-page news. Anyway, it was clear that JMB was turned on by the fraud claim and was willing to sign the FCPA complaint. Raul blows my mind – he is the one leading JMB down this path, and it comports with JMB's desire to fight the American company, which works politically in Ecuador and plays to his macho instincts.

Bottom line is that RH told me later that night – I met him at the Marriott for dinner – that after we left, Galo called JMB and they worked out a deal where Galo would pay the expenses and two-thirds of the fees, while JMB would pay one-third

of the fees. The question is when would the checks arrive, and would Winston have the guts in light of these promises (which have been made in the past without fulfillment) to hire the expert and maintain the fraud claim even if the money takes a few more days to arrive. This is where I am right now – I just fired off a quick email to Raul and Neil from the Quito airport, telling them to please get going and to not let the perfect be the enemy of the good. Jesus, putting in a fraud claim that is 75% factually developed is far better than no fraud claim at all. Just do it! And if it does not work, withdraw later rather than now so as to keep the hammer over their head for as long as possible.

On Tuesday, went to see Vargos with Luis, the Siuna guy, the Shushifindi leader, and Lauren in her jeans, jogging shoes, and navel-revealing T-shirt. We are using Vargos to pressure Galo, but it is unclear if even Vargos gets the stakes. He took me aside and again asked me for the camioneta for the close of the campaign. This is starting to stress me. He also makes passing references to fact no “cumple” and cosas asi. It is starting to cross the line from good-natured ribbing to something more serious, and I’m not really liking it nor do I feel I am handling it well. It is clear he expects something serious and material in return for the favors. We bought two meals at Crepes and Waffles for his wife’s raffle yesterday for \$60.

Our case: we are asking for inspections today. Ask for 3, not 4, all in same week, but we still don’t have perito. Woman biologist turned us down. Joe ignoring money memos, and we could be facing serious problems as a result.

September 13, 2006

Ec culture: none of the bank machines worked, none of the machines near airport worked, and almost missed plane as a result. Andres told me that to extend visa, had to pay \$10 in cash – but made people go to bank, do direct deposit, and then show the receipt to get the visa. The government doesn’t trust itself.

Had b’fast and dinner yesterday with Vargos Pazos, who is now a VP of PetroEc working under his old friend Chiriboga. Convinced him to do deposition asked for by Chevron, and he agreed after initially rejecting it. Told me about three tendencies in government re: arbitration: Tandazo (ignore it); Chiriboga, head of PE (show up to defend, but do not participate); and JMB and Alberto Wray (fully participate and defend). The Tandazo position might explain why the Winston bill has not been paid. I need to understand this issue better – how do I know Tandazo is wrong? VP said he would set up a meeting with Chiriboga and Tandazo. Tandazo and others have attacked Alberto for being a traitor. We have to see how this plays out – it certainly is not the image we want when he makes the final argument. On the other hand, it might allow him an oppty to redeem himself. Correa seems to be rising in the polls, and VP thinks he might be the defense

minister if Correa wins. He asked me for a camioneta so he could campaign for Correa and increase his chances of getting the defense ministry post. Incredible! The campaigns here seem to be all about caravans of cars going thru the steets, waving flags and playing music.

PDVSA rep in Ecuador was at dinner meeting – Luis Marquez. Gave him stuff. Got ball rolling. Really nice, humble guy. Interesting PDVSA has rep in Ec. Larger vision is that Venezuela builds a huge refinery in Ecuador on the Pacific Coast, from which it can export to new markets in China and Asia. Love it. If Correa wins, that kind of thing could really happen.

VP's daughter there. Told story of how stole 51 head of cattle. Has 3,500 acre farm in Concordia. Sells African Palm oil, bananas, raises cattle. The guy has wealth even though always crying poor. Wants to sue Noboa.

Legal case: going well with Yanez decision to cancel inspections. Chevron erupts. Big blow. Ironically, a function of other complaints about Yanez that we had nothing to do with, but that her perceives that we are behind. Pablo seemed to really handle it well. We wrote up a complaint against Yanez, but never filed it, while letting him know we might file it if he does not adhere to the law and what we need. The worst part is that after the decision – which was covered in the Ec press and the Oil Daily – he told Luis that we needed to back him now as he fights for survival on the court. So instead of a strong judge who sees the viability of our case, we now might have a weak judge who wants to rule correctly for all the wrong, personal reasons. Need to get going on the inspections (looking for perito) and peritaje global.

It is obvious Ecuador is a country where stuff gets done based on personal relationships. As I develop more of them, the more fuerza we will have. But to do that, I really need to spend more time in Quito – even live in Quito. Then I could know Correa, Maria Paula, etc. Our team couldn't be working better right now. Camino lawsuit against me and Joe in U.S.

Trip last Friday to Coca with Charles Champ. Visited Lago Central and Sacha Central. Champ's impressions. Old saying in East Texas: "It has to look good from the road." Saw clean –up operation by PE in Sacha Central for 300 plus pits. Encouraging, and threatening. Need to look into it more.

July 25, 2006